



SPANISH CONSTITUTIONAL COURT

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THE CONSTITUTIONAL COURT STRESSES THAT EXTERNAL ACTIONS OF THE AUTONOMOUS COMMUNITIES IS LIMITED TO MATTERS WITHIN THEIR JURISDICTION. INTERNATIONAL RELATIONS ARE RESERVED TO THE STATE

The Plenum of the Constitutional Court has partially upheld the action of unconstitutionality submitted by the Government against the Law 16/2014, of 4th December, on external action and relations with the European Union of the Parliament of Catalonia. The Court acknowledges the external action of the Autonomous Communities but reminds that it must always observe the exclusive power of the State in international relations —conclusion of international treaties, *ius contrahendi*, external representation of the State, *ius legationis*, and setting up international obligations— (Article 149.1.3 of the Spanish Constitution). Consequently, the Court endorses the constitutionality of some of the challenged provisions as long as they are interpreted in this sense. On the contrary, the Court annuls the provisions that aim to promote the establishment of “bilateral” relationships of Catalonia with other countries in the “public diplomacy” of the Generalitat of Catalonia. The rapporteur of the Judgment was the Constitutional Judge Andrés Ollero. The Ruling has three dissenting opinions from the Vice-President, Adela Asua, and the Judges Fernando Valdés Dal-Ré and Juan Antonio Xiol.

- The Court states the unconstitutionality of the following regional Law provisions: Sub-paragraph of Article 3 e) on the “acknowledgment of the right of the peoples to decide”. Such sub-paragraph will enable the Generalitat of Catalonia “*to support the independence processes in other States*”. This exceeds the external action foreseen in the Statute of Autonomy of Catalonia and, as a result, invades the powers of the State. The Generalitat of Catalonia “*lacks of the power to undertake the acknowledgment of the right to self-determination of any people, as this kind of acknowledgments correspond only to the Spanish State as an international law subject*”.
- Article 26. 1 e), referred to the establishment of institutional relationships with consular corps in foreign States and consulates by the Generalitat “*as a way to encourage bilateral relations*”. The Judgment states that the challenged provision promotes the assumption by the Generalitat of Catalonia of a representative function at international level, which actually does not have because it belongs to the State. Consequently, should that happen, “*it would undermine the foreign policy of the Spanish State*”. Sections i), j), k) and 1) of Article 2, as well as the regulation in Article 38. These provisions foresee the setting of the so-called “*public diplomacy*” as

an external action of the Generalitat of Catalonia, which is not within its power and whose targets are international law subjects coordinated by the Government of Catalonia. All this “without observing” the direction of the external action of the State derived from its exclusive power on international relations.

The Judgment argues that the external promotion of Catalonia, foreseen in its Statute of Autonomy, “does not cover the ‘public diplomacy’”. Its Article 200 (regarding the promotion of Catalonia in social, cultural and sports organizations) was considered constitutional by the Court in its Ruling 31/2010, of 28th June, as long as it clearly established “*the subordination of the Generalitat’s action*” to the State guidelines. “*Catalonia is not allowed to establish diplomatic relations because it is not a subject of international law*”.

- The Court states the constitutionality of the following challenged provisions: Articles 1, 3 and 4 on “*the external action of Catalonia*”. The Court points out that the external action of Autonomous Communities is constitutional as long as it is developed within their powers and its exercise observes the State power in foreign affairs (Article 149.1.3 of the Spanish Constitution). The challenged provisions do not turn Catalonia into a “*subject of international law*”, which is specifically forbidden.
- The last sub-paragraph of the first paragraph in Article 1.1. Article 7.1. To avoid the unconstitutionality, the external action of Catalonia must be coordinated with the state in order to guarantee the Governments’ objectives in foreign policy. Article 1.1 b) covering “*Catalonia as an active international actor*”. The Judgment explains that the State is the only one entitled to act as subject of international law. Therefore, considering Catalonia “as an active international actor” does not attribute the Autonomous Community “*international subjectivity*”.
- Sections a) and d) of Article 2 and Article 7.2 e). The expression “*interests of the country*” in Article 2 a) cannot be declared unconstitutional because it may also be interpreted as a “*territorial entity with international subjectivity, whose interests in external action remain within its powers*”.

Regarding the challenged Article 2 d) on the “*collaboration agreements*”, the Court points out that they cannot be considered unconstitutional since, as foreseen in Article 195 of the Statute of Autonomy of Catalonia, they refer to regional powers. Therefore, the Autonomous Community may subscribe administrative arrangements and non-legislative ones. Sub-paragraph of Article 4 a), “*Catalonia as a committed and responsible international actor*”. The Court explains that this provision must be understood in the Statute of Autonomy framework, this way it cannot be considered unconstitutional.

Madrid, 23th December 2016.